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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re K.S. et al., Persons Coming Under the Juvenile Court Law.	
SONOMA COUNTY HUMAN SERVICES DEPARTMENT, Plaintiff and Respondent, v. KELLY S., Defendant and Appellant.	A157870 (Sonoma County Super. Ct. Nos. 5778DEP & 5779DEP)

As in a related juvenile dependency case, *In re Charity C.* (June 24, 2020, A157679 [nonpub. opn.]) (*Charity C.*), Kelly S.'s (Mother's) two other minor children (K.S. and J.S., collectively Minors) were removed from her care due to substance abuse and mental health problems and were placed with their presumed father, Jason S. (Father). The juvenile court later found jurisdiction over the Minors, granted Father sole legal and physical custody, ordered visitation for Mother, dismissed the dependency case, and terminated jurisdiction. Mother now appeals all of these orders. We affirm.

I. BACKGROUND

We are familiar with many facts of this case, having considered them in the related dependency case involving Charity C., Mother's teenage daughter. (*Charity C.*, *supra*, A157679.)[1] The facts relevant to Minors are discussed below.

A. *Petition and Detention*

J.S. (born in 2012) and K.S. (born in 2013) are the biological children of Mother and Father. Minors lived with Mother, Charity C., Mother's 19-year-old son, and maternal grandparents. Father lived in Missouri, where Mother and Minors previously resided. Mother admitted that she regulated her mood and chronic pain with methamphetamine, rather than her prescribed medication or medical care. She felt overwhelmed by taking care of all of her children's needs. When unregulated, Mother was erratic, had frequent angry outbursts that included screaming, yelling, and throwing items, causing Minors to flee and hide under the bed or in the closet. The maternal grandparents had previously contacted law enforcement to address Mother's behavior.

K.S. often cowered, flinched, hid in response to loud noises, and frequently arrived at school tearful. He reported fearing Mother when she was angry. J.S. had delayed verbal skills as well as a history of encopresis (soiling) and absconding from school. He engaged in aggressive and

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[1] Minors' half-sister, Charity C., was also the subject of the dependency petition, and the juvenile court heard the matters related to the three siblings all together. A different panel of this Division considered the appeal in *Charity C.*, and affirmed juvenile court orders releasing Charity C. to her father in Missouri, assuming jurisdiction, removing her from Mother's care, and dismissing the dependency. (*Charity C., supra*, A157679.) The panel reversed the juvenile court's visitation order because it failed to specify the frequency or duration of Mother's visits. (*Ibid.*)

disruptive behavior at school, suffered from a low self-image, and spoke negatively about himself. When he did soil himself, J.S. was responsible for managing and cleaning himself up without assistance. Although J.S. had an individualized education plan (IEP) for emotional disturbance, school staff did not believe he was being adequately served due to additional undiagnosed mental health issues including autism spectrum disorder. However, Mother failed to take him to several psychological appointments, precluding a full assessment of his condition.

On February 13, 2019, the Sonoma County Human Services Department (Department) filed Welfare and Institutions Code[2] section 300 juvenile dependency petitions for Minors, based on allegations that Mother's mental health and substance abuse posed a risk of harm to Minors—inadequate care and supervision and serious emotional and behavioral issues. (See § 300, subds. (b)(1), (c).) At the detention hearing, the juvenile court detained Minors after finding it necessary to protect their physical and emotional health. Initially, K.S. was placed in a foster home, and J.S. was placed in a children's shelter. In April 2019, the court placed both Minors with Father after he was located.

B. *Jurisdiction and Disposition Report*

According to the Department's March 2019 jurisdiction and disposition report, Mother has bipolar disorder, a generalized anxiety disorder, depression, and attention-deficit hyperactivity disorder (ADHD), but regularly missed recommended neuropsychologist appointments for herself. Mother acknowledged needing to address her mental health and anger issues and attend counseling appointments—a sentiment echoed by maternal

[2] Undesignated statutory references are to the Welfare and Institutions Code.

grandparents—but claimed these concerns did not affect her ability to care for her children.

Mother was prescribed Adderall to manage her mental health, but she did not want to take it. She indicated her clinic would not fill her Adderall prescription because she used marijuana. Other records noted Mother used methamphetamine when she was not taking Adderall. Her statements about her drug use were inconsistent—on one occasion she stated she only tried methamphetamine once, but on other occasions she acknowledged experimenting multiple times when she was younger. Father confirmed Mother's history of methamphetamine, marijuana, and alcohol use when they were together in Missouri.

Conversations between the social worker and Mother highlight Mother's denial of the allegations in the dependency petition, limited responsibility for her actions, and confusion about Minors' removal from her care. She believed the dependency petition was the result of her need for housing, and having shared in confidence with school personnel that J.S.'s tardiness was attributable to her difficulty managing J.S.'s negative behaviors. Mother thought J.S.'s behaviors were due to his autism rather than any inaction on her part, even though she acknowledged missing medical appointments that would have confirmed any such diagnosis. Simply obtaining requisite signatures for J.S.'s IEP proved difficult, necessitating a visit by school staff to Mother's home, requiring maternal grandparents to rouse Mother from her sleep to sign the documents, and Mother "screaming and raging" at maternal grandfather for waking her up. She similarly attributed K.S.'s flinching and fearfulness to his being overly dramatic rather than a reaction to her behavior.

In 10 previous instances, Mother was referred to the Department for lack of supervision, neglect, and substance abuse, but the reports were generally deemed either inconclusive or "evaluated out"—meaning the report failed to satisfy the criteria for child abuse or neglect, lacked critical details, or allegations did not relate to an open case. (*Charity C., supra*, A157679.) In one substantiated referral from January 2019, however, a report confirmed Mother's mental health issues and possible methamphetamine use affected her ability to provide for mental health support for J.S., who had been absconding from the classroom and acting aggressively and violently towards other children. Minors' maternal grandfather also reported that Mother had recently been losing her temper.

Some reports deemed inconclusive were nonetheless corroborated by Mother's statements made during the Department's investigation. In 2016, J.S. was reported to soil his pants and smear feces on the wall at school. Mother later acknowledged he required medical and mental health services, but she did not take him to all his scheduled psychiatric appointments, in one instance blaming J.S. for defecating in his pants and being unable to clean it up in time for the appointment. In fall 2018, Mother drove Minors to school, reported she had no recollection of the previous five days, and admitted to using methamphetamine and marijuana. Even though she was not driving erratically, and Minors did not express fears or concerns, school staff drove Mother to a medical center for a potential psychiatric hold, where she admitted to staff that she had a substance abuse problem. (See § 5150 [temporary detention of mentally disordered individuals who pose a danger either to themselves or to others, for treatment and evaluation].) Following this incident, Mother was offered specific services, but claimed she would seek prevention services elsewhere.

The social worker's report about Father was more positive. After learning about the petition and Minors' removal, Father was responsive to the Department and quickly worked towards trying to obtain custody of Minors. Before the detention at issue here, K.S. recalled having conversations with Father, had no concerns about him, and noted that Mother often called Father when she missed him. When presented with the option of living with Father, Minors stated they had no worries.

Based on this information, the Department recommended granting Father custody and dismissing these dependency proceedings. It was concerned Mother failed to take responsibility for the circumstances leading to Minors' removal from her care, lacked insight into her own substance use and mental health needs, and had previously refused psychological evaluation for case planning or other referrals.

C. *Jurisdiction and Disposition Hearing*

During a contested jurisdiction and disposition hearing held on May 28, 2019, Mother testified, largely repeated her statements to the social worker, but also noted that she was pursuing the Department's referrals for parenting services, and would be attending future substance abuse treatments and individual therapy. With respect to giving custody to Father, Mother testified that he had a criminal history and had been violent towards her in the past. She requested the court continue the dependency to continue to supervise Minors if placed in Father's custody.

The court found true the allegations in the dependency petition, found clear and convincing evidence that Minors should be removed from Mother, awarded Father sole legal and physical custody of Minors, granted Mother monthly supervised visitation, and terminated dependency jurisdiction.

II. DISCUSSION

Dependency proceedings under section 300 are bifurcated, involving primarily a jurisdictional and dispositional phase, in addition to other temporary measures to protect the best interests of the child. (*In re A.S.* (2011) 202 Cal.App.4th 237, 243; *In re Henry V.* (2004) 119 Cal.App.4th 522, 530.) Under the Welfare and Institutions Code, a child may be taken into temporary custody, and a social worker "shall immediately investigate the circumstances of the child," and "immediately release the child to the custody of the child's parent" unless one of any enumerated conditions exist. (§ 309, subd. (a).) At the jurisdictional phase, the petitioner must demonstrate by a preponderance of the evidence that the minor is " 'within any of the descriptions set out in section 300 and therefore subject' " to the juvenile court's jurisdiction. (*In re A.S.* (2011) 202 Cal.App.4th 237, 244.)

"The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm." (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) If the court finds jurisdiction, it must then determine an appropriate disposition, including possible removal from parental custody if returning to home would pose a substantial danger to the minor's physical health and there are no reasonable alternatives for removal. (§ 361, subd. (c)(1); *In re E.E.* (2020) 49 Cal.App.5th 195, 205.) Against this legal framework, we address Mother's arguments.

A. *Release Order of Minors to Father*

Mother urges us to reverse the juvenile court's detention order because the court improperly allowed Minors to live in Missouri with Father without providing her requisite notice and without complying with the court's local rules, thus violating her due process rights. (See Super. Ct. Sonoma County Local Rules, rule 10.26.) However, Mother forfeited these arguments by

failing to assert them in the juvenile court, and we decline to exercise our discretion to review the claim on the merits.[3] (*In re Crystal J.* (1993) 12 Cal.App.4th 407, 411–412.)

Even if we assumed Mother preserved this argument, we do not review the detention order because it is moot. (*In re N.S.* (2016) 245 Cal.App.4th 53, 58–59 [dismissal of appeal if event occurs "that renders it impossible for the court to grant effective relief"]; *In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404 [assessment on an individualized basis whether subsequent events in a juvenile dependency matter render an issue moot—whether any decision affects the outcome in subsequent proceeding].) Here, the order releasing Minors to their Father was issued pending the jurisdiction and disposition hearing. It was later supplanted by granting Father sole legal and physical custody of Minors, rendering the interim release order moot. (*In re Julien H.* (2016) 3 Cal.App.5th 1084, 1088, fn. 7; *In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1414 [appeal of judgment following dispositional hearing renders appeal of detention order moot].)

As she did in *Charity C.*, Mother maintains the placement is not moot for two reasons, neither of which is convincing. (*Charity C.*, *supra*, A157679.) First, she argues the April 4, 2019 court order releasing Minors to Father was not temporary since it was issued during the jurisdiction and disposition hearing. The record does not support this contention. Minors were detained on February 15, 2019, and the court order vested temporary placement and

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[3] Our review of the record does not disclose support for Mother's assertion that she repeatedly objected on these claimed grounds. Rather, Mother's counsel argued minor had special needs that could not be met by Father. Moreover, since Mother contested jurisdiction, she would also have to persuade the court there would be a detriment to placing them with Father. Counsel even stated, "I don't know that at this point in time I can do anything more than object to them going."

care decisions "with the [Department] pending disposition or further order of the court." On April 4th, the court both scheduled a future jurisdiction and disposition hearing and released Minors to Father's care—a common practice pending a disposition hearing. (See § 309, subd. (a) [social worker is authorized to immediately release a child who has been taken into temporary custody to the child's parent]; *In re Phoenix B.* (1990) 218 Cal.App.3d 787, 792 [minor declared a dependent of court due to mother's psychiatric commitment, but later appropriately released to father after he was located].) Significantly, Mother's April 4th objection to releasing Minors to Father—"if we were to get to disposition, then we would be trying to persuade the court that there would be a detriment to plac[ing Minors] with the Father"—implicitly acknowledged the detention *not* a disposition.

Second, Mother claims the release order infected the subsequent disposition and placement with Father by eliminating her ability to avail herself of the Department's services, including referrals to a parenting class, psychological evaluations, treatment, counseling, and a team meeting for case planning. (See *In re C.C.* (2009) 172 Cal.App.4th 1481, 1488 [issue not moot if purported error infects outcome of a later proceeding].) We are not persuaded. While the purpose of the services is to " ' "facilitate the return of a dependent child to parental custody," ' " Minors' placement in Missouri did not present any obstacle to Mother's ability to attend case planning meetings, mental health treatment, counseling, or parenting classes in California. (*In re Karla C.* (2010) 186 Cal.App.4th 1236, 1244.)

Mother's additional complaint that releasing Minors to Father made it unlikely the court would order them to be returned to her custody at the disposition hearing is meritless as well. Mother acknowledges the Department's jurisdiction and disposition report filed one month after the

initial petition recommended Father have sole legal and physical custody of Minors. The report did not disclose any facts regarding Minors while in their Father's custody. Although the social worker presented limited testimony about Minors' condition after their release to Father, she largely repeated her statements made in the Department's report. The release order did not form the basis of the jurisdiction or custody decision, and the record does not indicate any basis to depart from the principle that appellate courts do not decide moot issues. (*In re N.S.*, *supra*, 245 Cal.App.4th at p. 63.)

B. *Substantial Evidence To Support Jurisdiction*

Mother challenges the findings that Minors were within the juvenile court's jurisdiction under section 300, subdivisions(b)(1) and (c). Jurisdictional findings are reviewed for substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We do not reweigh evidence or make witness credibility determinations, but instead review the record in the light most favorable to the dependency court and " ' "draw all reasonable inferences from the evidence to support the findings and orders." ' " (*Ibid.*) " 'The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order.' " (*In re Travis C.* (2017) 13 Cal.App.5th 1219, 1225.) After engaging in that review here, we reject Mother's claims.

1. Section 300, subdivision (b)

Section 300, subdivision (b) authorizes juvenile court jurisdiction over a child who has suffered, or for whom there is a substantial risk that the child will suffer, serious physical harm or illness resulting from the parent's inability to adequately supervise or protect the child, or "by the inability of the parent . . . to provide regular care for the child due to the parent's" mental illness or substance abuse. (§ 300, subd. (b)(1).) Mother contends the

jurisdictional finding under this section must be reversed because the Department did not identify her specific mental illness, she was not diagnosed with substance abuse by a medical professional, and there was no evidence these issues caused Minors any harm. We disagree.

a. *Mental Illness and Substance Abuse*

First, Mother acknowledged she had multiple mental health diagnoses, including bipolar disorder, a generalized anxiety disorder, depression, and ADHD. While she recently took Cymbalta for her depression, she denied her remaining disorders were untreated even though she declined medication for her bipolar disorder because of its adverse side effects, and often did not take her Adderall, but instead used marijuana and methamphetamine to manage her other disorders. There was ample evidence to conclude Mother had a mental illness.

Second, *In re Drake M.* (2012) 211 Cal.App.4th 754, upon which Mother primarily relies, concluded a parent's use of substances could not be the *sole* basis for such a finding of substance abuse. (*Id*. at pp. 764, 767.) It did not determine a medical diagnosis of substance abuse is a *required* element to find a substance abuse problem. (*Ibid*.; *In re Rebecca C.* (2014) 228 Cal.App.4th 720, 726.) In assessing whether the parent's marijuana use in *Drake M.* was sufficient to establish substance abuse, the court examined whether the substance use was life-impacting, identifying that the parent was employed, had no criminal history or recurrent substance-related legal problems, and did not use drugs to deal with social or interpersonal problems. (*Drake M., supra*, at pp. 767–768.)

The facts here are distinguishable from those in *Drake M.* We previously noted in *Charity C.* that Mother's substance abuse reinforced her mental illness and left it untreated. (*Charity C.*, *supra*, A157679.) She used

marijuana to sleep, ended up sleeping for long periods of time in the middle of the day, did not have a job, and had driven Minors while under the influence. When questioned why she did not take Adderall, her prescribed medication, Mother stated her clinic would not fill her prescription due to her marijuana use. Mother did not stop using marijuana despite acknowledging the barrier it presented to taking her medication. She also rationalized that she did not want to take Adderall anyway. In October 2018, Mother disclosed that she used methamphetamine when she ran out of Adderall and previously admitted to a mental health worker that she had a substance abuse problem. Charity C. similarly confirmed Mother's methamphetamine use. Indeed, Mother visited a hospital to refill her prescription for Adderall and tested positive for methamphetamine.

Mother's negative methamphetamine tests before the jurisdiction hearing do not alter our conclusion that substantial evidence supports the juvenile court's substance abuse finding. (*Charity C., supra*, A157679; *In re Rebecca C.* (2014) 228 Cal.App.4th 720, 726–727 [finding of substance abuse where [m]other's drug use spanned many years, relapse following involvement in drug program, rationalization for use of drugs and admission to having a substance abuse problem constitute substantial evidence of substance abuse]*; In re Casey D.* (1999) 70 Cal.App.4th 38, 52–53 [accepting "the evidence most favorable to the order as true and discard[ing] the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact"].)

b. *Risk of Harm*

Mother next argues that there is no nexus between her alleged mental illness or substance abuse and any *current*, substantial risk of harm to Minors. (See *In re David D.* (1994) 28 Cal.App.4th 941, 953 [harm cannot be

presumed from the mere fact of a parent's mental illness, there must be a showing of how it affects or jeopardizes a child's safety].) But the record is replete with events and statements linking the two.

Maternal grandparents acknowledged Mother did not take her medication, she was prone to anger and yelling at Minors, and recommended she attend anger management classes. Four months before the dependency petition was filed, Mother drove Minors to school while under the influence of methamphetamine and marijuana and had no recollection of the past five days. (See *In re L.W.* (2019) 32 Cal.App.5th 840, 850 [driving under the influence provides nexus between substance abuse and substantial risk of harm].) A few years prior, Mother beat Charity C. with a pillow and threatened to stab everyone with a knife, leaving her daughter crying. Though prior incidents, this evidence demonstrates Mother's untreated mental illness and substance abuse resulted in inadequate supervision and substantial risk of harm. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 ["evidence of past conduct may be probative of current conditions" and in cases where children are of "tender years," the risk to a child's physical health and safety is inherent in the absence of adequate supervision and care].) Mother's continued substance use, lack of insight into the reasons why Minors were detained, and denial of having an untreated mental illness present " 'some reason to believe the acts may continue in the future.' " (*Ibid.*)

Relying on *In re David M.* (2005) 134 Cal.App.4th 822, Mother claims the Department did not demonstrate any specifically identifiable harm to Minors. But the Department is not required to "precisely predict how Mother's mental illness" or substance abuse will harm Minors. (*In re Travis C., supra*, 13 Cal.App.5th at pp. 1226–1227 [sufficient to demonstrate

that parent's illness and choices create "substantial risk of *some* serious physical harm or illness"].) And the facts in *David M.*—no evidence parents' mental illnesses impacted their ability to care for minor, who was described as healthy, well-cared for, and loved—starkly contrast with those here. (*David M.*, *supra,* 134 Cal.App.4th at p. 830.)

Shortly before the dependency petition was filed, maternal grandfather reported Mother frequently stayed in bed due to her depression. There was evidence Mother's untreated mental illness and substance abuse resulted in a chronic pattern of Mother neglecting Minors' needs, such as not participating in IEP meetings, attending mental health appointments for herself or Minors, ensuring Minors arrived at school and were picked up on time, or staying alert during hours she was responsible for caregiving (sometimes she slept). Mother reported feeling overwhelmed by Minors and her other children and that her brain was "disorganized" and unable to execute plans for caring for them. She alternated between an inability to be roused from sleep and aggressive or angry behavior, resulting in her yelling at Minors and throwing items in the house.

In one instance, Mother screamed and yelled after being woken up to sign documents required for J.S.'s IEP. In another, Minors' maternal grandparents called law enforcement to address Mother's anger. Although Mother suggests that Minors were physically well-protected because there were three other adults in the house, and there was no evidence that she used the drugs in the Minors' presence or that they had access to them, a court "need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child." (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.) A court could reasonably conclude there was substantial evidence to support a finding of risk of harm. (See *In re*

Casey D., *supra*, 70 Cal.App.4th at pp. 52–53 ["Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact"].)

c. *Jurisdiction Report*

Mother next claims these jurisdictional findings are primarily based on a Department report that the juvenile court did not read, consider, or admit into evidence, and thus is not competent evidence. Not so. The juvenile court rendered its decision after it "reviewed the documentation, heard the evidence [and] listened to the argument." The written findings further state that "[t]he Court has read, considered, and received into evidence the social worker's report dated March 18, 2019, including the case plan." (See § 355, subd. (b)(1) [a social worker report constitutes competent evidence to support a jurisdictional finding].) We agree that a juvenile court may take judicial notice of findings and orders in prior dependency proceedings, not hearsay allegations contained in the file. (See *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882.) Although Mother complains the juvenile court improperly noticed hearsay allegations when it took judicial notice of its file, Mother has not identified any specific facts that the court improperly considered. In those circumstances, we presume the court considered only those facts it was authorized to consider. (See *In re Amber D.* (1991) 235 Cal.App.3d 718, 724.) The juvenile court's failure to check a box in its minute order that it read and considered the report does not undermine the conclusion there was substantial evidence supporting its jurisdictional findings.

2. Section 300, subdivision (c)

Children are within the jurisdiction of the juvenile court if they are "suffering serious emotional damage, or [are] at substantial risk of suffering serious emotional damage." (§ 300, subd. (c).) Evidence of this damage includes "severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent." (*Ibid*.) Relying heavily on *In re Brison C.* (2000) 81 Cal.App.4th 1373, a case in which the child was relatively happy and displayed no serious behavioral problems aside from occasional nightmares and anxiety, Mother claims Minors did not suffer from severe anxiety and therefore there was insufficient evidence for a finding under section 300, subdivision (c). (*Brison C., supra*, at pp. 1379–1380.) We disagree.

The record shows Mother's belligerence with her children caused them to fear her and run away to hide. J.S. had an IEP for emotional disturbance, encopresis, and a poor self-image, referring to himself as a "bad boy" and "poopy pants." While in Mother's care, J.S. ran out of his classroom, screamed, and hit other children. (*In re H.E.* (2008) 169 Cal.App.4th 710, 724 [emotional damage may be demonstrated through aggressive assaultive behavior to other children and adults].) J.S. said he was afraid to have a social worker come to his house because the social worker would relate J.S.'s statements to Mother and she would scream. He reflexively covered his face when questioned about Mother, and he demonstrated to the social worker how he ran way and covered his ears when Mother screamed.

K.S. reported that Mother yelled often and used bad words that made him cry and very scared. He felt safe at school with his teachers, but fearful of Mother, hid when people raised their voices, and counted in his head when Mother was angry. School staff reported K.S. began to follow J.S.'s lead, and

soiled his pants outside of school. J.S. further spontaneously offered that K.S. always cries and hides. This evidence was sufficient to support a finding that Minors were suffering serious emotional harm at the time of the jurisdictional finding.

Mother challenges this conclusion by claiming Minors did not receive any psychological evaluation or assessment for severe anxiety, and J.S.'s behaviors are the result of his autism spectrum disorder, not her actions. These contentions do not help Mother. There is nothing in section 300, subdivision (c) that requires a psychological evaluation to prove serious emotional damage. (§ 300, subd. (c).) And to the extent Mother claims J.S.'s aggressive behaviors, particularly his encopresis, were the result of an autism disorder, the failure of J.S. to obtain a proper diagnosis or psychological treatment was caused by Mother's failure to take him to necessary appointments. (*In re Alexander K.* (1993) 14 Cal.App.4th 549, 557 [intervention by dependency system warranted when parent is unable to provide adequate mental health treatment to child suffering serious emotional damage]; *In re H.E.*, *supra*, 169 Cal.App.4th at p. 724 ["Mere support for a contrary conclusion is not enough to defeat the finding"].)

Construing the record to support the jurisdictional finding, we find this sufficient evidence that Minors were at serious risk of emotional damage caused by Mother.

C. *Substantial Evidence To Support Removal*

Mother urges us to reverse the dispositional order removing Minors from her care because, in addition to her purported reasons for reversing the jurisdictional findings which we have already rejected,[4] the Department did

[4] We only address Mother's new, additional arguments challenging removal.

not pursue reasonable efforts to prevent that result. Removal of children from a custodial parent is authorized upon clear and convincing evidence of "substantial danger to the . . . physical health, safety, protection, or physical or emotional well-being" of the minor and " 'there are no "reasonable means" by which the child can be protected without removal.' " (*In re Ashly F.* (2014) 225 Cal.App.4th 803, 809; § 361, subd. (c)(1).) In *Charity C.* this Division addressed the same arguments and facts Mother presents here in support of reversal, and we see no reason to deviate from that conclusion with Minors. (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1011 [appellate review of facts that must be proven by clear and convincing evidence requires reviewing "whether the record as a whole contains substantial evidence from which a reasonable fact finder could have found it highly probable that the fact was true"]; *Charity C.*, *supra*, A157679.)

The juvenile court determined there was clear and convincing evidence that reasonable efforts had been made to prevent or eliminate the need to remove Minors, and continuance in Mother's home was contrary to their welfare. The Department's efforts included case planning, mental health and substance abuse treatment referrals, parenting classes, psychological evaluations, and counseling. (*In re Ashly F.*, *supra*, 225 Cal.App.4th at p. 809 [reversing removal order where the department failed to discuss in its report any reasonable efforts to prevent or eliminate need for removal].) At the time the juvenile court made the removal finding, it had before it the following evidence: Mother's continued denial that she had unresolved mental health and substance abuse issues and failure to obtain a prescription for Adderall, her failure to engage in or demonstrate any progress with the Department's referrals despite having three months between Minors' detention and the disposition hearing, and statements that she attended individual counselling

but omitting any detail of their frequency or impact. (*Charity C.*, *supra*, A157679.)

Although Mother testified to her willingness to engage in individual therapy and other services at the time of the disposition hearing, she acknowledged that it had been a while since she had talked to her counselor, that she had failed to avail herself of the Department's referrals in the past, and that she had only recently initiated contact with the Department's referrals. The juvenile court determined "[t]he extent of progress made by the mother toward alleviating or mitigating the causes necessitating placement has been nonexistent." In these circumstances, combined with the evidence supporting the jurisdiction findings, the juvenile court could find it highly probable there were no reasonable means to protect Minors short of removal.

D. *Terminating Jurisdiction*

Mother argues the court erred by terminating jurisdiction without expressly making a finding about Minors' need for ongoing supervision while in Father's custody. On this point, Mother is correct.

Where a child is removed from the physical custody of a parent with whom the child was residing, the juvenile court must place the child with the noncustodial parent upon request for custody unless it would be detrimental to the child's well-being—a finding that the juvenile court properly made here. (§ 361.2, subd. (a).) After that placement, a court has three alternatives: order the noncustodial parent to assume custody of the child, terminate juvenile court jurisdiction, and enter a custody order (§ 361.2, subd. (b)(1)); continue jurisdiction and require a home visit within three months, after which the court may make further orders (§ 361.2, subd. (b)(2)); or order reunification services to either or both parents and later determine

which parent, if either, shall have custody of the child (§ 361.2, subd. (b)(3)). (*In re Karla C., supra*, 186 Cal.App.4th at p. 1243.) When terminating jurisdiction, the juvenile court must make a factual written or oral finding that supervision "is no longer necessary—i.e., after the court assesses detriment and concludes none exists, it must decide whether there is a need for continuing supervision." (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1134; § 361.2, subd. (c); see Cal. Rules of Court, rule 5.695(a)(7)(A).) Orders terminating jurisdiction are reviewed for an abuse of discretion while the court's factual findings are reviewed for substantial evidence. (*In re A.J.* (2013) 214 Cal.App.4th 525, 535 fn. 7) But the failure to make the required findings under section 361.2 justifying the court's decision is error. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218.)

Here, after choosing the first alternative—awarding Father sole legal and physical custody of Minors, ordering visitation, and terminating the dependency jurisdiction—the court simply stated "[j]urisdiction of the court is hereby terminated" without providing any written or oral basis for this determination. But although the court did not identify the factual basis for its order, this error was harmless because it is not reasonably probable the findings would have been in favor of continued jurisdiction. (*In re J.S.* (2011) 196 Cal.App.4th 1069, 1078 ["Reversal is justified 'only when the court, "after an examination of the entire cause, including the evidence," is of the "opinion" that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error' "].)

Here, the evidence is overwhelming that the Minors were safe and thriving in Father's care, and ongoing dependency jurisdiction was not needed. After Father learned of the dependency petition, Father expressed love and concern for Minors, and requested custody. Father is employed,

owned his own "immaculate" four-bedroom home with two bedrooms for Minors, and had created a plan for providing care to Minors and his two other daughters. Father had considerable family support for providing care to Minors. (See *In re K.B.* (2015) 239 Cal.App.4th 972, 982 [court did not abuse discretion granting full custody to non-offending parent who requested custody and had the ability to provide child with healthy loving environment].)

Mother argues the absence of any reports documenting Father's experience with autism suggests Father was ill-equipped to address and manage J.S.'s behaviors. However, the social worker testified that Father is "really good at accessing services in Missouri." In the two months since Minors were placed with Father, he had already commenced necessary services for J.S., including an IEP, behavioral support, and individual counseling to address his autism. When testifying about her visit with Minors in Missouri pending the jurisdiction and disposition hearing, the social worker stated J.S. "looked better to me than I've seen him. He was able to look at me in the eye which he never did before, and he was able to have a conversation." She further testified that while J.S. continues to experience some behaviors, requiring Father to discipline him, K.S. appeared relaxed and J.S. appeared happy.

Mother contends Father's criminal history, including two 2018 domestic violence allegations, warrants continuing jurisdiction over Minors. This fact, however, did not give the Department pause in recommending that the court terminate jurisdiction. During the jurisdiction and disposition hearing, the social worker appears to have given the allegations little weight because of the dearth of evidence supporting them and the fact that formal charges were never pursued. The court agreed, noting the social worker was

experienced, and "aware of various reasons that domestic violence cases don't go forward, insufficient evidence, lack of witnesses, all of those things." Criminal and child welfare checks performed in Missouri similarly did not reveal any barriers to placement with Father. At the time the Department filed its report, Father's two daughters, aged 10 and 11, were removed from their mother's custody by Missouri child services and placed with him. Further evidence of risk was Mother's testimony about her domestic violence allegations against Father, which were presented to the juvenile court during the hearing, and which had been investigated and found not credible by the social worker.

Contrary to Mother's arguments, it is not reasonably probable that the juvenile court would have continued dependency jurisdiction based on Father's high school education level, his own learning disability, and lack of time to provide appropriate supervision to Minors given the competing demands of his job, other children, and home remodeling.[5] (Cf. *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 790 [for removal proceedings, "we are concerned only about his or her grasp of the important parenting concepts—things such as a child's need for security, adequate nutrition and

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[5] Mother also argues that although Father was not present at the jurisdiction and disposition hearing, the juvenile court's minute order incorrectly registers his counsel's presence. But she fails to provide any cogent analysis of how this was judicial error, and the authorities upon which she relies are either irrelevant here, or stand for the uncontroversial premise that the court must assess whether there is an ongoing need for supervision, not that the noncustodial parent's presence was required for any hearing. (*In re Karla C.*, *supra*, 186 Cal.App.4th at pp. 1244–1245 [court decides whether there is a need for ongoing supervision]; *In re R.T.* (2015) 232 Cal.App.4th 1284, 1306 [assessing *adoptive* parents, not noncustodial parent]; *In re M.C.* (2011) 199 Cal.App.4th 784, 809–810 [addressing reunification services when child is *not* in parental custody].)

shelter, freedom from violence, proper sanitation, healthcare, and education"].) There is no requirement that parents achieve a certain level of education or have significant spare time to parent.

In short, the evidence before the court showed that continuing supervision of the Minors was no longer required.

E. *Visitation Order*

Finally, we reject Mother's argument that the juvenile court improperly delegated the power to adjust the visitation order to a private third party, thereby violating the separation of powers doctrine. A juvenile court may make an exit order regarding visitation when it terminates its jurisdiction over a dependent child. (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1122–1123.) While a court may not delegate its power to determine the right and extent of visitation to a nonjudicial official or private party, it can delegate "the responsibility for managing the details of visits, including their time, place and manner." (*Id.* at p. 1123.) The visitation order here properly determined the rights and extent of Mother's visits with Minors, granting them no less frequently than once each month, lasting two hours. Father or his designee was required to transport Minors both to and from the visits, and the visits must take place in Father's state and county of residence. The juvenile court further required the visits be supervised until further order of the superior court. There was no improper delegation.

III. DISPOSITION[6]

The juvenile court orders are affirmed.

STREETER, Acting P. J.

WE CONCUR:

TUCHER, J.
BROWN, J.

[6] Mother claims there were several discrepancies in the clerk's minute orders: 1) a minute order from April 4, 2019, listing the wrong attorney as counsel for Minors; and 2) a minute order from May 28, 2019, stating that one attorney appeared for another at the hearing. However, Minors' attorney was properly listed in both the minute order and the hearing transcript. To the extent there is a discrepancy between the clerk's minute orders and the reporter's transcript, we presume there is a clerical error in the minute order. (*In re A.C.* (2011) 197 Cal.App.4th 796, 799–800.)